

**Via Electronic Mail**

March 17, 2009

Mr. Barry A. Thom  
ATTN: Becky Renko  
Acting Regional Administrator  
National Marine Fisheries Service, Northwest Region  
7600 Sand Point Way NE  
Seattle, WA 98115-0070

**RE: Application for Experimental Fishing Permit; Pacific Whiting [RIN 0648-XN12]**

Dear Mr. Thom:

The Magnuson Stevens Fishery Conservation and Management Act (MSA) requires that conservation and management measures minimize bycatch. *See* 16 U.S.C. §1851(a)(9). Excessive bycatch in the Pacific whiting fishery of overfished rockfish species and salmon protected by the Endangered Species Act (ESA) has been demonstrated and documented over the past several years. It is the responsibility of the National Marine Fisheries Service (NMFS) to take immediate action to minimize this bycatch.

The Agency's continued reliance on Experimental Fishing Permits (EFPs) to continue the Pacific whiting shoreside fishery's monitoring program is insufficient to meet the letter of the law. While this monitoring program has merit, NMFS must remember that EFPs allow fishing that would otherwise be prohibited and are only intended for limited experimental purposes. *See* 50 C.F.R. §600.745(b). Initially, an EFP to gather information on bycatch may have been appropriate, but managing a major part of a fishery, year after year, through EFPs violates the basic premise for which EFPs are meant to be used. Even the agency, in its environmental assessment, recognized that "EFPs are intended to be a temporary and an exploratory response[.]" 2007 Draft Environmental Assessment (2007 EA) at 1.

NMFS has stated that it would have a permanent federal maximized retention and monitoring program in place by 2008, but the agency has yet to transition to this program. Instead, the agency intends to implement this program under EFPs for the 2009 fishing season. While we commend the agency for taking action to ensure bycatch species from the whiting fishery are retained and accounted for, the agency must immediately move forward to transition the shoreside whiting sector to a permanent retention and monitoring program.

Thank you for your consideration and we look forward to working with you on this important matter.

Sincerely,



Sarah Winter Whelan  
Pacific Counsel  
Oceana

CC: Dr. Donald McIsaac, Pacific Fishery Management Council